

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:

THE TOWN OF NOLENSVILLE

RESPONDENT

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**DIVISION OF WATER
POLLUTION CONTROL**

CASE NUMBER WPC08-0097

CONSENT ORDER AND ASSESSMENT

This CONSENT ORDER is entered into between the Tennessee Department of Environment and Conservation (hereinafter the "department") and Respondent Town of Nolensville, to avoid costly litigation; and upon the Town of Nolensville's's desire to fully cooperate with the State of Tennessee in this matter. As evidenced by the signatures of counsel below the parties stipulate and agree, subject to the Reservation of Rights herein, as follows:

PARTIES

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "division" and the "department" respectively).

II.

The Town of Nolensville (hereinafter the "Respondent") is engaged in the construction and relocation of Rocky Fork Road in Williamson County (hereinafter the "site"). Service of

process may be made on the Respondent through the Honorable Beth Lothers, Mayor of the Town of Nolensville, at P.O. Box 547, Nolensville, Tennessee 37135.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the Water Quality Control Act (the “Act”), has occurred, or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the “Rule”). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a “person” as defined by T.C.A. § 69-3-103(20) and as herein described, has violated the Act.

V.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction

Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site specific Storm Water Pollution Prevention Plan (SWPPP), and appropriate fee.

VI.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VII.

The unnamed tributary to Mill Creek, described herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

FACTS

VIII.

On May 7, 2007, the Respondent submitted a NOI, SWPPP and appropriate fee to the Nashville Environmental Field Office (NEFO) requesting coverage under the TNCGP for the relocation of a portion of Rocky Fork Road, as well as an application and supporting documents

requesting written authorization under an appropriate ARAP for the construction of a minor road crossing over Mill Creek. The division issued coverage under the TNCGP and written authorization for the minor road crossing and assigned tracking numbers TNR145532 and NRS07.135, respectively on July 20, 2007.

IX.

On February 25, 2008, the division received a complaint that an unnamed tributary to Mill Creek had been relocated into an unstable channel as part of the Rocky Fork Road relocation activities.

X.

On March 3, 2008, division personnel conducted a hydrologic determination of the unnamed tributary to Mill Creek. Based on channel morphology, flow, and hydrophytic vegetation, the unnamed tributary was determined to a stream.

XI.

On March 13, 2008, division personnel conducted a complaint investigation at the site and noted that fill dirt had been placed in the unnamed tributary and that flow from the unnamed tributary had been diverted into an unstable channel running along the eastern flank of the relocated section of Rocky Fork Road. A subsequent file review determined that written authorization for this activity had not been requested or issued.

XII.

On March 24, 2008, the division issued a Notice of Violation to the Respondent for the violations noted during the March 3, 2008, and March 13, 2008, site investigations. The

Respondent was instructed to develop and submit within 30 days, a Corrective Action Plan (CAP) for the unauthorized stream alteration. The CAP was to include plans and specifications for the stabilization of the new channel as well as for the restoration of flow and a timeline for the implementation of required actions.

VIOLATIONS

XIV.

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(b) and 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any Waters of the State;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XV.

By causing a condition of pollution in the unnamed tributary to Mill Creek, Respondent has violated T.C.A. Section § 69-3-114(a), which states:

§ 69-3-114(a):

It shall be unlawful for any person to discharge any substance into the waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in §69-3-103(22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER ON CONSENT

XVI.

WHEREFORE, the Director hereby ORDERS and the Respondent hereby CONSENTS to the provisions of the paragraphs below.

1. The Respondent shall, within 7 days of receipt of this CONSENT ORDER AND ASSESSMENT, establish effective EPSC measures at the Rocky Fork Road relocation such that sediment does not leave the site. These measures shall be chosen and installed in accordance with Tennessee Erosion Control Handbook. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.

2. The Respondent shall, within 30 days of receipt of this CONSENT ORDER AND ASSESSMENT, submit a stream restoration plan detailing the measures to be taken to return the flow of the unnamed tributary to its original channel by installing a culvert beneath the relocated Rocky Fork Road. Once the unnamed tributary is returned to its original channel, the diversion channel that was created as a part of the Rocky Fork Road relocation shall be re-graded to its original contours and stabilized. The Respondent shall submit this plan for review and approval to the Manager of the Natural Resources Section (NRS) at 401 Church Street, 7th Floor L&C Annex, Nashville, Tennessee 37243-1534.
3. The Respondent shall, within 6 months of receiving written authorization from the division, complete the activities outlined in the approved stream restoration plan.
4. The Respondent shall pay a CIVIL PENALTY of TEN THOUSAND DOLLARS (\$10,000.00) to the division, hereby ASSESSED to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this CONSENT ORDER AND ASSESSMENT, pay a CIVIL PENALTY in the amount of ONE THOUSAND DOLLARS (\$1,000.00).
 - b. If the Respondent fails to comply with Part XVI, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.
 - c. If the Respondent fails to comply with Part XVI, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.

- d. If the Respondent fails to comply with Part XVI, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND DOLLARS (\$3,000.00), payable within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this CONSENT ORDER AND ASSESSMENT. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing CONSENT ORDER AND ASSESSMENT is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the CONSENT ORDER AND ASSESSMENT will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

RESERVATION OF RIGHTS


The Town of Nolensville neither admits nor denies the factual allegations or the alleged violations of law contained in this Consent Order and Assessment No. 08-0097. The Town of Nolensville agrees to comply with Consent Order Order and Assessment No. 08-0097, in order

to avoid the cost of protracted litigation and to voluntarily promote greater environmental protection. The Town of Nolensville reserves the right to contest the factual allegations and alleged violations contained in this Consent Order and Assessment in any proceeding other than a proceeding brought by the Department to enforce the terms of this Consent order and Assessment.

NOTICE AND WAIVER OF RIGHT TO APPEAL


By agreeing to this Consent Order, the Town of Nolensville waives their statutory right under T.C.A. Section 69-3-109 to seek review of this assessment. The individual signing on behalf of the Town of Nolensville, affirms that he/she has the requisite authority to bind the Town of Nolensville in a matter of this nature.


Issued by the director of the Division of Water Pollution Control on behalf of the Commissioner of the Tennessee Department of Environment and Conservation on this 30th day of June 2008.

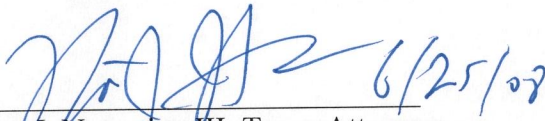


Paul E. Davis, P.E.
Director, Division of Water Pollution Control

APPROVED FOR ENTRY:


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